

COMMONWEALTH OF MASSACHUSETTS

CITY OF LOWELL

In City Council

ORDINANCE

An Ordinance Amending "Code of Ordinances, City of Lowell, Massachusetts," with respect to Chapter 222, entitled Peace and Good Order, by adding §222-20 entitled "Smoking in Playgrounds Prohibited."

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The City Council, by virtue of Massachusetts General Laws, Chapter 43, Section 95, has the right to general management and control of the City of Lowell; and

The City Council has an interest in promoting the health, safety, and welfare of the residents of the City of Lowell; and

Prohibiting smoking in a park, public playground, school or in a location where children congregate or play in which play equipment for children is located, or which is equipped with facilities for recreation, including but not limited to ball fields and courts in which children's activities occur and also including fenced-in tot-lot areas.

It is the intent to promote good order and decorum in public spaces of the City of Lowell; and

Prohibiting smoking of any tobacco product made or derived from tobacco or nicotine that is intended for human consumption, whether smoked, chewed, absorbed, dissolved, inhaled, snorted, sniffed or ingested by any other means including, but not limited to, cigarettes, cigars, chewing tobacco, pipe tobacco, snuff, electronic cigarettes, electronic cigars, electronic pipes, vaping products, hookahs, electronic hookahs or other similar products, regardless of nicotine content in any playground in the City of Lowell.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LOWELL, as follows:

1. "The Code of Ordinances City of Lowell, Massachusetts" hereinafter called the "Code", adopted by the City Council on December 23, 2008, as amended, is hereby further amended with respect to Chapter 222, entitled Peace and Good Order by adding the following section:

**§222-20. Smoking in Playgrounds Prohibited**

**A. Definitions.**

(1) For purposes of this ordinance, the following terms have the following meanings:

**PLAYGROUND** - An area located in a park, at a school or in its own location where children congregate or play, in which play equipment for children is located, or which is equipped with facilities for recreation. Playgrounds shall include ball fields and courts in which children's activities occur. Playgrounds also include fenced-in tot-lot areas.

**SMOKING** - Inhaling, exhaling, burning or carrying of a lighted or heated cigar, cigarette, pipe or other tobacco product intended for inhalation in any manner or form, including the use of electronic cigars, electronic cigarettes, vaping products, electronic pipes or other similar products that rely on vaporization or aerosolization.

**TOBACCO PRODUCT** - Any product containing, made or derived from tobacco or nicotine that is intended for human consumption, whether smoked, chewed, absorbed, dissolved, inhaled, snorted, sniffed or ingested by any other means including, but not limited to, cigarettes, cigars, chewing tobacco, pipe tobacco, snuff, electronic cigarettes, electronic cigars, electronic pipes, vaping products, hookahs, electronic hookahs or other similar products, regardless of nicotine content. "Tobacco product" includes any component of a "tobacco product" but does not include any product that has been approved by the United States Food and Drug Administration either as a tobacco use cessation product or for medical purposes and which is marketed and sold or prescribed solely for the approved purpose.

**B. Conduct Prohibited.**

(1) Smoking tobacco products by any person shall be unlawful in, on or within fifty (50) feet of a playground.


**C. Enforcement and Penalties.**

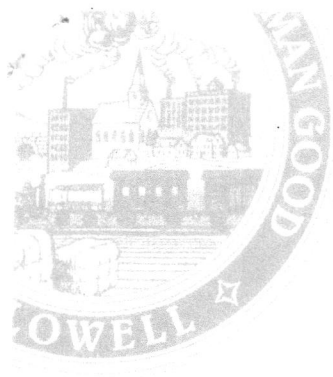
(1) Any person found in violation of this Ordinance shall be subject to a fine of \$200 for the first offense and \$300 for any subsequent offenses. Any fine imposed under the provisions of this Ordinance shall inure to the City of Lowell. Enforcement of this Ordinance shall be by noncriminal disposition as provided in M.G.L. c. 40 § 21D or by filing a criminal complaint at the appropriate venue.

2. If any section, subsection, sentence, clause, phrase, word, or other portion of this ordinance is, for any reason, held to be unconstitutional or invalid, in whole, or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this ordinance, which remaining portions shall continue in full force and effect.

3. This Ordinance shall take effect upon its passage in accordance with the provisions of Chapter 43 of Massachusetts General Laws.

APPROVED AS TO FORM:

  
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Gary D. Gordon  
Assistant City Solicitor



## City of Lowell - Law Department

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December 6, 2019

City Manager Eileen M. Donoghue  
Mayor William Samaras  
And  
Members of the City Council

Re: Ordinance to prohibit Smoking in Playgrounds

Dear Manager Donoghue, Mayor Samaras and Members of the City Council:

In response to a motion request to place non-smoking signs at playgrounds, it was determined that initially an Ordinance would be required to prohibit smoking in or around playgrounds and other locations where children congregate or play.

The attached ordinance proposes to prohibit smoking in playgrounds. The ordinance is intended to protect children in any public area such as a park, at a school or where children congregate or play in which play equipment for children is located, or which is equipped with facilities for recreation, including ballfields, courts and also fenced in tot-lot areas.

While this is an evolving area of law and may require further amendments, this proposed ordinance is intended to provide the police with added local regulations, in addition to existing state laws.

Pursuant to this ordinance, individuals smoking any tobacco product as defined in this Ordinance in playgrounds will be subject to local fines. Nothing in this ordinance, however, shall prevent the police from taking additional action against violators under state law.

Very truly yours,

Gary D. Gordon  
Assistant City Solicitor